

**DEPOSITION OF AMY BERNARD**

MINIDEP by Kenson

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SWATCH S.A.,

Opposer, Opposition No.: 91169312  
v.

Mark: SWAP

AMY T. BERNARD and  
BEEHIVE WHOLESALE LLC, Serial No.: 78/459527

Applicant.

**ORAL DEPOSITION OF AMY BERNARD**

October 14, 2009

207 West Carolina Avenue

Ruston, Louisiana

Reported by Sara Jo Hood, CCR

State of Louisiana

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Taken October 14, 2009

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**APPEARANCES:**

**FOR THE APPLICANT:**

WILLIAM J. UTERMÖHLEN, ESQ.  
Oliff & Berridge, PLC  
277 South Washington Street, Suite 500  
Alexandria, Virginia 22314

**FOR THE OPPOSER:**

THOMAS P. GULICK, ESQ.  
Collen IP  
The Holyoke-Manhattan Building  
80 South Highland Avenue  
Ossining-on-Hudson, Westchester County  
NEW YORK 10562

**ALSO PRESENT:**

Mr. Brent Bernard

**REPORTED BY:**

Sara Jo Hood  
Certified Court Reporter  
Certificate No. 87336  
State of Louisiana  
100 West Texas Avenue, Third Floor  
Ruston, Louisiana 71270  
(318) 255-4691

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**EXHIBIT INDEX**  
**ORAL DEPOSITION OF AMY BERNARD**  
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EXHIBIT	INITIAL REFERENCE
17 Copy of notes from brainstorming session	8

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**Sara Jo Hood**  
Certified Court Reporter  
State of Louisiana  
318 927-4771

**Defendant's  
Exhibit 36**

**DEPOSITION OF AMY BERNARD**

MINIDEP by Kenson

The deposition, upon oral examination, of AMY BERNARD, being taken by counsel for applicant pursuant to notice and agreement of counsel as authorized by 37 C.F.R. Section 2.123 and the Federal Rules of Civil Procedure before Sara Jo Hood, Certified Court Reporter, State of Louisiana, beginning at 8:15 a.m., on the 14th day of October, 2009, at the Law Offices of Raymond Madden, III, 207 West Carolina Avenue, Ruston, Louisiana 71270; it being agreed and stipulated by and between counsel that all formalities, with the exception of swearing the witness and the reading and signing of the deposition, are waived; that the notarization of deponent's signature is waived; that objections shall be stated on the record.

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**DEPOSITION OF AMY BERNARD****MINIDEP by Kenson**

1 PROCEEDINGS

2 MR. GULICK:

3 Before we begin, can we just put on the  
4 record who is here in the room?

5 MR. UTERMOHLEN:

6 Sure.

7 MR. GULICK:

8 We'll let the record reflect the deponent,  
9 Amy --

10 MR. UTERMOHLEN:

11 I'm William Utermohlen, counsel for the  
12 applicant. Next to me is Brent Bernard,  
13 corporate representative for Beehive Wholesale.

14 MR. GULICK:

15 My name is Tom Gulick. I'm counsel for  
16 the opposer in this case. We're going to  
17 object insofar as the presence of Mr. Bernard  
18 as a corporate representative, and just with a  
19 brief instruction that, obviously, he's not to  
20 talk to anyone about the testimony that is  
21 taking place in this room.

22 MR. UTERMOHLEN:

23 I'm not sure I understand your objection.  
24 What's the grounds for it again?

25 MR. GULICK:

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1 In other words, he's not to speak to the  
2 witness or you during the course of the taking  
3 of the testimony itself.

4 MR. UTERMOHLEN:

5 So your objection is that you don't want  
6 him consulting with either me or the witness --

7 MR. GULICK:

8 During the testimony.

9 MR. UTERMOHLEN:

10 During Amy Bernard's deposition?

11 MR. GULICK:

12 Testimony, yes.

13 MR. UTERMOHLEN:

14 All right. I understand the objection.

15 AMY BERNARD

16 having been first duly sworn, was examined and  
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. UTERMOHLEN:

20 Q. Ms. Bernard, could you state your name for the  
21 record, please?

22 A. Amy Bernard.

23 Q. And where are you employed, Ms. Bernard?

24 A. Beehive.

25 Q. That's Beehive Wholesale, LLC?

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1 A. Yes.

2 Q. And what's your position there?

3 A. My position as owner is product development and  
4 guiding the company overall product, product  
5 development and design.6 Q. And you were deposed in this case earlier? You  
7 recall that?

8 A. Yes.

9 Q. When did Beehive first introduce the Swap product  
10 line?

11 A. It was around June 2003.

12 Q. Had the name "Swap" been chosen by that time?

13 A. Yes. Yes, it had.

14 Q. How was the name "Swap" chosen?

15 A. As all of our product lines, we do a brainstorming  
16 session where we just throw out a list of ideas and  
17 then we all talk about it and think about what would be  
18 the best name for a product line and then we decide.

19 MR. UTERMOHLEN:

20 Madam Court Reporter, if you could initial  
21 that version.

22 MR. UTERMOHLEN:

23 Q. Ms. Bernard, let me show you what's been marked as  
24 Exhibit 17. Do you recognize that document?

25 A. Yes.

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1 Q. What is it?

2 A. It's a piece of paper where we did a brainstorming  
3 session and tried to come up with names for our new  
4 product line.5 Q. And which of these names were potential, or let me  
6 restate that. Which of these words were potential  
7 names for the product line?

8 A. Pretty much all of them. They were all considered.

9 We wrote down just a list of what we were thinking  
10 about. Most of them on there are potential names, with  
11 the exception of "watch" or "beads," you know, from  
12 just brainstorming.

13 Q. So "Sir Mix a Lot" was one?

14 A. Yes.

15 Q. And "Switch" was another?

16 A. Yes.

17 Q. "Mix Match"?

18 A. Yes.

19 Q. "Mix Max" as well?

20 A. Yes.

21 Q. Did all those names suggest interchangeability?

22 MR. GULICK:

23 Objection, foundation.

24 A. Yes, they did.

25 MR. UTERMOHLEN:

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**DEPOSITION OF AMY BERNARD****MINIDEP by Kenson**

1 Q. And is that what you thought at the time?  
 2 A. Yes.  
 3 Q. Of those names, why was Swap chosen?  
 4 A. Out of the names we came up with, Swap was the  
 5 shortest, number one. It was the easiest to remember,  
 6 and it was catchy.  
 7 Q. I want to change to another topic now. To your  
 8 knowledge, do any of the purchasers of Swap products  
 9 resell those products?  
 10 A. Yes. I have seen our products resold.  
 11 Q. In what context?  
 12 A. Under the Swap brand.  
 13 Q. Where have you seen them resold?  
 14 A. Ebay, various Internet outlets.  
 15 Q. And are they labeled in any way or under what name?  
 16 A. Yeah. They usually put "Swap Watch."  
 17 Q. And I've got one other topic, and that's the Swatch  
 18 Company that's the opposer in this case.  
 19 A. Uh-huh.  
 20 Q. Think you testified at your first deposition that  
 21 you first heard of Swatch as a teenager? Is that  
 22 right?  
 23 A. Correct.  
 24 MR. GULICK:  
 25 Objection, leading.

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1 A. Yes.  
 2 Q. Is it true that you're aware of the Swatch brand in  
 3 association with watches?  
 4 A. Yes.  
 5 Q. Is it true that you have seen Swatch displayed in  
 6 Times Square and internationally?  
 7 A. Yes. After this came up and we got a letter from  
 8 Swatch, I was in New York and I saw the store there --  
 9 Q. Do the --  
 10 MR. UTERMOHLEN:  
 11 Let her finish her question --  
 12 A. Yeah. Before that, I had never seen it in an  
 13 outlet near us, but after, you know, visiting New York,  
 14 I did see it there.  
 15 MR. GULICK:  
 16 Q. Are you aware of the Swatch store in the Houston  
 17 airport?  
 18 A. No.  
 19 Q. Have you been to the Houston airport?  
 20 A. I can't say I usually fly to that airport, no.  
 21 Q. Was the Swatch name chosen because of the  
 22 interchangeability feature of the watch?  
 23 A. Can you repeat that? I'm sorry.  
 24 Q. Actually, let me rephrase it. The name "Swap" was  
 25 selected because of the interchangeability feature of

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1 MR. UTERMOHLEN:  
 2 Q. When did you first hear of Swatch?  
 3 A. I think it was probably about my seventh-grade  
 4 year. Yeah, as a 12-year-old, I guess.  
 5 Q. Approximately when was that?  
 6 A. Well, let me think. Probably 80. Yeah, 1980.  
 7 Q. And after that time, did you encounter Swatch  
 8 before this opposition was begun?  
 9 A. No.  
 10 MR. UTERMOHLEN:  
 11 Okay. I don't have any other questions at  
 12 this time.  
 13 CROSS-EXAMINATION  
 14 BY MR. GULICK:  
 15 Q. You just mentioned that Swap brand products were  
 16 resold in other, I guess, market channel, markets of  
 17 trade, correct?  
 18 A. Yes.  
 19 Q. And one of those would be the Internet, correct?  
 20 A. Yes.  
 21 Q. Ebay would be one of the sites that had some of the  
 22 watches --  
 23 A. Correct.  
 24 Q. It's also true that you sell them in your retail  
 25 store locations, correct?

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1 the watch, correct?  
 2 A. We thought it suggested that, yes.  
 3 Q. Has the word "watch" been used in association with  
 4 Swap, such as "Swap Watch"?  
 5 MR. UTERMOHLEN:  
 6 Objection, beyond the scope of direct.  
 7 A. I believe so.  
 8 MR. GULICK:  
 9 Q. Swap mark is used in association with beaded watch  
 10 bands and watch faces? Is that correct?  
 11 A. That's correct.  
 12 MR. UTERMOHLEN:  
 13 Same objection.  
 14 MR. GULICK:  
 15 Q. Did the term "Swap" for you mean interchangeable?  
 16 A. I believe it suggests that.  
 17 Q. Were you previously deposed in this matter?  
 18 A. Yes.  
 19 MR. UTERMOHLEN:  
 20 I object to this line of questioning as  
 21 beyond the scope of direct.  
 22 MR. GULICK:  
 23 You can make the objection for the record.  
 24 However, this did come up during the direct  
 25 examination.

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**DEPOSITION OF AMY BERNARD****MINIDEP by Kenson**

1 MR. GULICK:  
 2 Q. Is interchangeability one of the features of the  
 3 Swap Watch?  
 4 A. Sure. We have beaded bands and faces which we sell  
 5 separately because one can choose what band they want  
 6 to go with what face.  
 7 Q. Do you recall stating in your previous testimony  
 8 that Swap meant interchangeable?  
 9 A. I don't specifically recall.  
 10 Q. You were deposed September 7, 2006, in this matter?  
 11 A. If you say so (laughing). I don't remember the  
 12 exact date, but I'm sure.  
 13 Q. Do you remember being asked the question: "So how  
 14 was it decided that Swap was going to be the name?"  
 15 Followed by an answer: "It was one everyone liked in  
 16 our office. It was short. It meant interchangeable?"  
 17 A. I don't specifically recall, but yeah, I could  
 18 have.  
 19 Q. You mentioned previously that you first learned of  
 20 the Swatch mark roughly in the seventh grade?  
 21 A. Yeah. 1980, I guess.  
 22 Q. Have you seen the brand since that date?  
 23 A. Yes. After this came up --  
 24 Q. Have you seen a store --  
 25 A. -- I noticed the store.

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1 All right.  
 2 (Witness excused)  
 3  
 4  
 5  
 6  
 7  
 8 I, AMY BERNARD, do hereby certify that I have read  
 9 the foregoing transcript and that the same and  
 10 accompanying change sheets, if any, constitute a true  
 11 and complete record of my testimony.  
 12  
 13  
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1 MR. UTERMOHLEN:  
 2 Let her finish her answer.  
 3 A. After this came up, I saw the store in Times  
 4 Square, but I haven't seen it in a regional outlet near  
 5 us, only in a branded store. In their own store.  
 6 MR. GULICK:  
 7 Q. I'm sorry. When you say "branded store," what do  
 8 you mean?  
 9 A. In their own store. In a store that only sells  
 10 Swatch products. That's the only time I've seen it.  
 11 Q. A Swatch store, in other words?  
 12 A. In Times Square. That's the only time I've seen it  
 13 sold in a retail outlet.  
 14 Q. Does the name "Beehive" appear on any of the  
 15 watches that contain the Swap mark?  
 16 MR. UTERMOHLEN:  
 17 Objection, beyond the scope of direct.  
 18 A. I'm pretty sure on all our packaging we put "by  
 19 Beehive." I'd have to look at the packaging, but I'm  
 20 pretty certain that almost on all carding and tagging  
 21 we put "by Beehive" on all the products that we sell.  
 22 MR. GULICK:  
 23 I have nothing further for this particular  
 24 witness.  
 25 MR. UTERMOHLEN:

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STATE OF LOUISIANA :  
 PARISH OF LINCOLN :

I, Sara Jo Hood, Certified Court Reporter in and for the  
 State of Louisiana, do hereby certify that the said witness came  
 before me at 8:15 o'clock a.m., on the 14th day of October, 2009,  
 and after she was first duly sworn, she was examined and  
 testified as shown; that the testimony was reported by me and  
 thereafter transcribed by me and is a true and correct record of  
 the testimony given by the witness; that the adverse party was  
 not present for the taking of the deposition.

I further hereby certify that the officer before whom this  
 deposition was taken was not disqualified as specified in Rule 28  
 of the Federal Rules of Civil Procedure.

I further certify that I am not of counsel or related to or  
 employed by any of the parties to this cause or by their  
 attorneys or in any wise interested in the event thereof.

SUBSCRIBED AND SWORN TO on this the 3rd day of November,  
 2009.

Sara Jo Hood  
 Certified Court Reporter  
 Certificate No. 87336  
 State of Louisiana

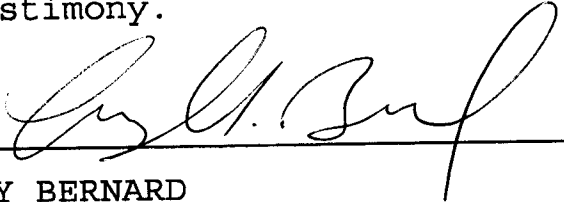
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**Amy Bernard**

All right.

(Witness excused)

I, AMY BERNARD, do hereby certify that I have read the foregoing transcript and that the same and accompanying change sheets, if any, constitute a true and complete record of my testimony.

  
AMY BERNARD

STATE OF LOUISIANA :

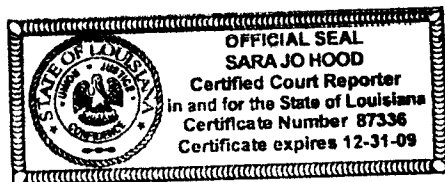
PARISH OF LINCOLN :

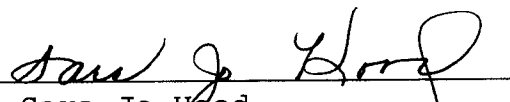
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SUBSCRIBED AND SWORN TO on this the 3rd day of November, 2009.



  
Sara Jo Hood  
Certified Court Reporter  
Certificate No. 87336  
State of Louisiana